HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 889 of 2004 M.S.

Ajay Kumar
Vs
Principal Judge, Family
Court, Haridwar and another

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 21.9.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 889 of 2004 (MS)

Ajay Kumar ..... Petitioner

Versus

Principal Judge, Family Court, Haridwar
& another ..... Respondents

Sri Parishit Saini, Advocate for the petitioner
Standing Counsel for the respondents.

Dated:- 21.9.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 8.1.2004 & 12.3.2004 passed by the Judge, Family Court, Haridwar.

Briefly stated that the marriage of the petitioner and the respondent no.2 was solemnized on 5.2.1998 at village Bakarpur, P.S. Lakshar, District Haridwar. The husband treated the wife with cruelty for want of dowry and ultimately on 16.2.2001 he turned the respondent no.2 (wife) out of the house. The respondent no.2 has also got a child. At present respondent no.2 is living with her parents and her child is also with her.

She filed an application under section 125 Cr.P.C. before the Judge, Family Court, Haridwar, for grant of maintenance

allowance against the petitioner husband, with the allegations that she has no independent source of livelihood. The petitioner husband was earning Rs.8,000/- per month by driving three wheeler and by getting house rent. During pendency of the application opposite party husband did not turn up and the application was decided by the Court below vide order dated 11.10.2002. The opposite party husband was directed to pay Rs.2,000/- per month to the wife and minor son from the date of the presentation of the application.

The opposite party husband has filed an application under section 126 (2) Cr.P.C. for setting aside the ex parte order dated 11.10.2002. The learned Court below has held that the order was passed on merit and not ex parte and rejected the application of the opposite party husband vide order dated 12.9.2003.

The opposite party husband filed a writ petition against the said order before this Court, which was allowed vide order dated 15.11.2003 and the Judge, Family Court was directed to dispose of the petition on merit. The respondent husband was also directed to pay Rs.1,500/- per month to the wife as interim maintenance along with 50% of the arrears of maintenance in lump sum within three weeks.

After the order of remand, the Judge, Family Court has restored the application under section 125 Cr.P.C. On 8.1.2004 the opposite party husband was not present in the Court. The learned Judge, Family Court has held that the opposite party husband had derelicted to pay the amount of monthly maintenance i.e. Rs.1,500/- per month, as fixed by the High Court and also failed to deposit 50% of the arrears of maintenance amount i.e. Rs.19,950/- and directed that recovery

warrant for Rs.22,950/- and non-bailable warrant be issued against the opposite party husband. Feeling against the opposite party husband has filed the present writ petition.

I have perused the order dated 15.11.2003 passed by Hon. Mr. Justice Irshad Hussain. The petitioner husband was directed to pay interim maintenance of Rs.1,500/- per month and 50% of the arrears of maintenance in lump sum and the application under section 125 Cr.P.C. was directed to be decided on merit. So far as the order dated 15.11.2003 passed by this Court is concerned, the same has become final and binding on the parties till the final disposal of the application under Section 125 Cr.P.C. and the opposite party husband is bound to pay interim maintenance allowance @ Rs.1,500/- per month and 50% of the arrears of maintenance to the applicant wife. Thus I final no infirmity in the order dated 8.1.2004, passed by the Judge, Family Court under Section 125(3) Cr.P.C. and no interference is required under Article 226/227 of the Constitution of India.

However, the counsel for the petitioner has prayed that no cohesive method be applied against the petitioner husband for realization of amount as his economic condition is not well. The petitioner husband is, therefore, directed to pay a sum of Rs.5,000/- in lump sum on 24th September 2004, apart from Rs.1,500/- shall be deposited per month as interim maintenance. However, remaining arrears shall be paid in three equal instalments within a period to two months.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon J.)

21.9.2004
*Dhyani